

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RICKY ANTONIO DAVIS, JR., #369621,

Petitioner, Case No. 2:10-cv-182

v. Honorable R. Allan Edgar

GARY J. CAPELLO,

Respondent.

MEMORANDUM AND ORDER

Ricky Antonio Davis, Jr., a Michigan state prisoner in the custody of the Michigan Department of Corrections, filed a pro se motion for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted of third-degree criminal sexual conduct. Petitioner challenges the trial court's refusal to allow him to withdraw his no contest plea.

On May 1, 2013, Magistrate Judge Timothy P. Greeley submitted a report and recommendation. Doc. No. 17. Magistrate Judge Greeley found that the habeas petition was without merit and that petitioner had not met his burden of showing that he is entitled to habeas relief under 28 U.S.C. § 2254. It is recommended that petitioner's habeas petition be denied and dismissed with prejudice, and that a certificate of appealability be denied pursuant to 28 U.S.C. § 2253(c)(2). Petitioner has not filed any objections to the report and recommendation. After reviewing the record, the Court ACCEPTS and ADOPTS the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. L.Civ.R. 72.3(b). The entire habeas petition is DENIED and DISMISSED WITH PREJUDICE.

If petitioner files a notice of appeal from the decision and judgment in this case, the notice of appeal will be treated as an application for a certificate of appealability which shall be DENIED pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Reasonable jurists could not find that the dismissal of each of petitioner's habeas claims was debatable or wrong.

A separate judgment will be entered.

SO ORDERED.

Dated: 6/3/2013 /s/ R. Allan Edgar
R. Allan Edgar
United States District Judge